UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2001/148
30 March 2001

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Agenda item 10

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to food

Report on the Third Expert Consultation on the Right to Food

Chairman-Rapporteur: Mr. Asbjørn Eide

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 4	2
II.	SUMMARY OF PRESENTATIONS AND DISCUSSION	5 - 13	2
III.	CONCLUSIONS	14 - 20	4
IV.	RECOMMENDATIONS	21 - 45	4
	A. General	21	4
	B. National implementation	22 - 34	5
	C. International implementation	35 - 45	7
Annex: List of participants			10

GE.01-12339 (E)

I. INTRODUCTION

1. The present report is submitted in accordance with paragraph 9 of Commission on Human Rights resolution 2000/10, in which the Commission recommended that the High Commissioner for Human Rights "organize a third expert consultation on the right to food, following those held in 1997 and 1998, this time with a focus on implementation mechanisms at country level, inviting experts from all regions to share their experience".

2. The consultation was organized by the Office of the High Commissioner for Human Rights and hosted by the Government of the Federal Republic of Germany in Bonn from 12 to 14 March 2001. The overall objective was to exchange national experiences and to advance the understanding of the operationalization of the right to food, as part of a rights-based development policy.

3. More specifically, the task set was to examine specific country experiences in implementation of General Comment No. 12 on the right to adequate food (article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR))[1], adopted by the Committee on Economic, Social and Cultural Rights[2] on 12 May 1999. In particular, the consultation explored rights-based policy formulation and programming for food and nutrition security, national legal instruments and institutions, as well as the justiciability of the right to food and related rights. It also focused on the monitoring role of national human rights commissions, ombudsmen and related institutions.

4. Forty-seven participants attended the meeting, including experts from developing countries of all regions; representatives of national human rights commissions; representatives of United Nations bodies and specialized agencies; and the United Nations Special Rapporteur on the right to food. The Deputy High Commissioner for Human Rights participated on behalf of the High Commissioner. A full list of participants may be found in the annex. Mr. E. Riedel, Mr. A. Eide and Ms. C. McClain were elected Chairpersons, respectively, for each session of the meeting. Mr. Eide was also elected as Rapporteur.

II. SUMMARY OF PRESENTATIONS AND DISCUSSION

5. Mr. Eide reviewed the issues to be addressed by the consultation. He pointed out that the main task was to advance the understanding of ways in which Governments, in cooperation with civil society, could implement the right to food drawing on General Comment 12 which called upon States to elaborate a strategy and then to take concrete, meaningful steps towards the realization for everyone within their territory of freedom from hunger and the right to adequate food. Such a strategy required detailed and exact knowledge about the situation of the different groups in society, in order to know precisely who among them was food insecure and vulnerable to lack of adequate food and therefore required special attention.

6. He reminded the participants that the strategy preferably should make use of national framework legislation clarifying the contents of the right, the benchmarks for its realization, the institutional responsibility for advancing the right to food and the mechanisms for monitoring compliance with the benchmarks set up. How this should be done should be a primary concern

during the consultation. He noted that while it was important to explore the content and nature of international obligations related to the right to food, this issue would hopefully be further explored in a subsequent consultation.

7. Country presentations reviewed the present situation and the future prospects concerning the national implementation of the right to food in the following countries: Brazil, Colombia, El Salvador, Mali, Mexico, Mozambique, Nepal, Norway, Philippines, Romania, South Africa, Uganda, Zambia and Zimbabwe. These and other presentations made during the consultation will be the subject of a narrative report of the consultation to be posted in the OHCHR Web site.

8. Greatly facilitated by the country presentations, the general discussion focused on strategies for implementation. Participants proposed that the right to food should be inserted into the growing framework of poverty reduction strategies, which to succeed would need a human rights perspective and to identify the reasons why some people were poorer than others. It was not only a question of low income but also of "wrong" processes of development.

9. There was need to examine how human rights criteria could supplement income-based poverty definitions. Other strategies would review macro-economic reform processes in many countries and make transparent their impact on the enjoyment of the right to food.

10. A common concern was the lack of understanding and thus recognition of economic, social and cultural rights among parliamentarians, government officials and the judiciary. Awareness-raising and capacity development were needed through legislation, within national administrations, and in ombudsmen and national human rights institutions, on how to address economic, social and cultural rights, particularly the right to food, in their daily work. Opinion leaders could change levels of general awareness; it was recalled that the right to be free from torture also took a long time to be recognized. Accountability must be given increasing attention.

11. The consultation reviewed international mechanisms aimed at monitoring national implementation of the right to food. They included the States' reporting practice to the United Nations human rights treaty bodies; the Special Rapporteur of the Commission on Human Rights on the right to food; the draft optional protocol to the ICESCR to enable the CESCR to receive individual complaints; and the "International Code of Conduct on the human right to adequate food" which had been adopted by a large number of non-governmental organizations.

12. Participants recommended that national seminars be held to spell out immediate implementation tasks as well as to discuss more systematically framework legislation and plans of action.

13. In conclusion, Mr. Eide reviewed the very constructive and creative discussions and presented draft conclusions and recommendations which the participants discussed and endorsed.

III. CONCLUSIONS

14. The implementation of the right to adequate food [3] at the national and international levels should be guided by General Comment 12 on the right to adequate food adopted by the CESCR on 12 May 1999, which was an authoritative legal interpretation clarifying the normative content of the right and the respective State obligations.

15. Poverty eradication and the implementation of human rights were not separate and independent fields of activity, but were interrelated. The debate on poverty reduction should be guided by the strategies for implementation of the right to food and other human rights.

16. Economic growth did not in itself guarantee adequate food availability and access, unless there was an equitable distribution of the benefits of growth. In order to ensure freedom from hunger and malnutrition, the progressive realization of the right to food and other human rights must guide the development activities of individual States. The main problem was generally not the lack of food but the absence of effective entitlements by all to food or productive resources.

17. Economic and physical access to food was crucial, especially for vulnerable and disadvantaged groups. Special efforts must be made to protect households or groups that were unable to cope on their own, such as elderly people, those who were terminally ill, or other disadvantaged groups or individuals. Measures must be taken to ensure the enjoyment of the right to food by persons, households and communities affected by the HIV/AIDS epidemic.

18. The right to food and other social, economic and cultural rights were as "genuine" as human rights as were civil and political rights[4]. The 1993 Vienna Declaration and Programme of Action, which was adopted by consensus, stated in its Part I, paragraph 5 that "[a]ll human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis".

19. The right to food should be seen not only in the context of State obligations but also take into account the responsibilities of different actors (parents, family group, the local community, private corporations and international actors). The concrete implementation of these different responsibilities should be facilitated and enforced by national Governments.

20. Prerequisites for implementing the right to adequate food should include: (a) political will; (b) organizational and managerial capacity; and (c) the allocation and appropriate use of adequate resources.

IV. RECOMMENDATIONS

A. General

21. The expert consultation recommended that education and information on the right to food and other economic, social and cultural rights be intensified. Knowledge of the scope and content of these rights should be enhanced among civil society, national human rights

institutions, human rights commissions, parliamentarians, judges, advocates, educators, administrators, etc. Education on the right to food should draw extensively on General Comment 12.

B. National implementation

22. The expert consultation recommended new and stronger measures at the national level to increase the accountability of States through a multi-pronged strategy for national implementation, as set out in General Comment 12. The strategy should make an inventory or checklist of issue areas which needed national regulation through legislation and other measures. The most appropriate ways and means would vary significantly from one State party to another, though some features would be common to many, such as guaranteeing access to productive resources for the food-insecure and the vulnerable, including land tenure and access to water.

23. The elaboration of the strategy should start with a careful auditing of existing national legislation, policy and administrative measures and available recourse procedures, followed by the adoption of an administrative agenda for change and amendment. It should include the development of indicators and benchmarks to facilitate and measure the implementation of the right to adequate food.

24. A review should be made of existing impediments to the full implementation of the right to adequate food, including

(a) A review of existing legislation to determine whether it was adequate and covered the needs and problems of all vulnerable groups for the enjoyment of the right to adequate food[5], whether there was anything within existing legislation which contradicted the obligations under the right to adequate food, and whether there were internal contradictions among the laws with negative consequences for the implementation of the right to food;

(b) A determination of whether existing legislation lacked adequate implementation and the reasons therefor;

(c) An analysis of existing legal and other recourse procedures to determine whether effective remedies existed for everyone whose right to food was violated or neglected, including ombudsmen systems (defensor del pueblo, human rights commissions and others) as well as effective administrative and judicial remedies and recourse procedures.

25. Based on the findings of the review set out above, States should develop a legislative agenda to strengthen the implementation of the right to adequate food. They should repeal or change laws incompatible with the right to food and make the necessary changes in the implementation policies and in the existing recourse procedures, taking into account the weaknesses revealed by the review.

26. In pursuit of their legislative agenda for implementation of the right to food, States should consider the adoption of a framework law or constitutional provision in line with paragraph 29 of General Comment 12 containing the basic commitment of the State to implement the right to adequate food, the recognition and precise description of the content of

the right to food, and the State obligations in that regard. The framework law should include provisions on its purpose, the targets or goals to be achieved and the time-frame for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society, the private sector and international organizations; institutional responsibilities for the process; and the national mechanisms for its monitoring.

27. The legislative agenda should contain the basic commitment of States to educate and inform their residents of their rights and responsibilities and ensure greater publicity at the national level, greater awareness and better monitoring.

28. Stronger involvement of local governments in implementation of the right to food was recommended. These were key institutions for delivery of services and reaching food-insecure population groups. Decentralization meant allocation of responsibility and budgets to local authorities, in accordance with the subsidiarity principle, while taking into account the continuous obligation of the State to ensure for all residents the enjoyment of all human rights.

29. Setting up focal points for the right to food in national administrations could play a catalytic role. Such focal points should not limit their range to a particular institution (e.g. Ministry of Agriculture), but extend their operations to all relevant sections of the Government, in particular the Ministries of Finance, Social Welfare, Health and Land.

30. Ombudsmen, human rights commissions and similar national institutions could make effective contributions to protect and promote the right to food, including its implementation and supervision, provided that they are given the necessary resources, independence and scope of action. They were needed for processing complaints and seeking remedies. The absence of an appropriate national legal framework, the lack of resources and/or lack of independence could severely reduce their effectiveness.

31. States should develop indicators and set benchmarks, as provided for in paragraph 29 of General Comment 12. The indicators and benchmarks would allow verification of the progress of establishing the right to food at country level. It might also be useful to draw up a list of categories of potential violations of the right to food, reflecting the special features of the country concerned, in order to anticipate and thereby avoid such violations. It could help to identify the shortcomings in implementation.

32. As recommended in Objective 7.4 of the 1996 Rome Declaration and Plan of Action on World Food Security, States shall favourably consider the formulation of voluntary guidelines for food security for all (para. (e) in fine). In this connection, a broad coalition of non-governmental organizations adopted an "International Code of Conduct on the right to adequate food". Such a code could be a powerful instrument not only to improve national implementation, but also to address the responsibilities of actors other than States in the implementation of the right to food. The code should be further developed by FAO and OHCHR, in collaboration with other relevant agencies and inter-agency arrangements. The occasion of the "Rome plus five" Summit in November 2001 would offer an opportunity to start such a process.

33. There was still limited information available on the prevailing situation concerning the right to food, since reporting by States to the human rights treaty bodies was often insufficient to determine the main obstacles and possible solutions. The parallel reporting by non-governmental organizations and civil society organizations was generally a valuable additional source of information. In particular, joint efforts in the form of "composite reports", which were compiled by a larger number of organizations, provided credible sources of additional information.

34. Increased use could be made of national seminars and workshops on the implementation of economic, social and cultural rights in general and the right to adequate food in particular. Participation by members of the CESCR and other international experts would be useful. Such seminars could be funded by donor and/or host countries, and could be organized in cooperation with OHCHR and civil society groups. Regional seminars could also be organized, involving the existing regional organizations or networks.

C. International implementation

35. It was recommended that CESCR reformulate its current guidelines for States reporting on article 11 of the ICESCR, taking into account General Comment 12. Moreover, in doing so CESCR should try to solicit and make use of proposals from national human rights organizations and intergovernmental and non-governmental organizations.

36. OHCHR, in cooperation with FAO and other relevant agencies, was encouraged to conduct two new studies, one consisting of a collection of ideas and best practices in the national implementation of the right to food, drawing on available literature and work of civil society organizations; the other on elements and models for national framework legislation.

37. The expert consultation recommended that CESCR, in a general comment or statement, further clarify the obligations of immediate application and those related to progressive realization as set in article 2, paragraph 1, of ICESCR, taking into account the work already done in General Comment 3 (1990), paragraph 9, which was drawn up by the Constitutional Court of South Africa in its decision on the Grootboom case (2000) (para. 45).

38. Further expert consultations on the right to food were recommended in three main areas, namely: (a) the international obligations and implementation under ICESCR, in particular with respect to the right to food; (b) ways and means to integrate the right to food into poverty-related policies, strategies and programmes; and (c) the role of national institutions in monitoring the implementation and progressive realization of the right to food.

39. The expert consultation recommended that national and international organizations, including FAO, WFP and others, as well as the bilateral and multilateral development cooperation agencies, adopt a rights-based approach in their work of implementing the right to food as set out in paragraphs 40 and 41 of General Comment 12.

40. The human rights approach to food had the potential to create awareness that the rigid self-help orientation of mainstream development philosophy, including structural adjustment programmes (SAPs), could violate human rights by excluding many of the "poorest of the poor" households from access to minimum food requirements.

41. The fulfilment of the right to food, like all human rights, was closely linked to appropriate economic, environmental and social policies and in particular the efforts towards eradication of poverty. It was crucial that the right to food be adequately reflected in poverty-related policies and programmes, and be used as the guiding principle within the preparation of Poverty Reduction Strategy Papers (PRSPs).

42. Food-related national plans or strategies like SAPs, Sector Investment Programmes and PRSPs, to which many States were already bound, must integrate economic, social and cultural rights, and particularly the right to food, as guiding principles. General education, awareness creation and lobbying efforts were required to establish the right to food in the mindset of decision-makers and affected population groups. Specific efforts should be made to include the right to food approach in ongoing national reform processes. Such processes of change provided a platform for reaching out to various groups of stakeholders (in a given sector) through national consultations and influencing policy formulation.

43. SAPs and economic reform processes in general should be reviewed with respect to their impact on the enjoyment of the right to food. There were strong indications, and in some cases also concrete evidence, that these programmes increased economic and social disparities, at least in the short run. In many countries, particularly developing countries, market forces were not a sufficient guarantee of the delivery of crucial services, especially in remote areas and to marginalized groups. This had seriously impacted on the welfare of large parts of populations. Specific measures needed to be developed to ensure that adverse effects of such programmes were addressed and that the right to food was not violated.

44. The unsustainable external debt burden of many developing countries, in particular those that met the criteria of the Heavily Indebted Poor Countries (HIPC) initiative, often limited States' capacities to implement their human rights obligations with respect to economic, social and cultural rights. There was an urgent need to reduce substantially the foreign debt burden within the overall framework of the United Nations system to combat poverty and to enable States to comply with their human rights obligations. States were encouraged to mention limitations to their capacity to implement their obligations owing to the foreign debt burden when they reported to CESCR.

45. Food embargoes or similar measures endangering the enjoyment of the right to food must be avoided in all circumstances. Other economic sanctions would also in most cases have a deleterious effect on the enjoyment of the right to food. Careful attention should therefore be given to General Comment 8 (1997) adopted by CESCR on the relationship between economic sanctions and respect for economic, social and cultural rights.

Notes

[1] See E/C.12/1999/5 of 12 May 1999.

[2] Hereafter: CESCR

[3] The consultation understood that the ultimate objective of the right to adequate food was to achieve nutritional well-being. Nutritional well-being was dependent on parallel measures in the fields of education, health and care. In the broader sense, the right to adequate food was to be understood as the right to adequate food and nutrition.

[4] In the past there had been resistance from all parts of the world to the recognition of many of the rights included in the Universal Declaration of Human Rights. While, by way of example, it was now generally recognized that everyone had a right to be free from torture and cruel and inhuman treatment, one needed only to go back some 30-40 years to find authorities in the West, as well as elsewhere, who justified torture and severe maltreatment as a legitimate ultimate measure to extract sensitive information.

[5] For example, it should be determined whether the International Code of Marketing Breast-Milk Substitutes and subsequent World Health Organization resolutions had been implemented.

Annex

List of participants

I. NATIONAL EXPERTS

H.E. Ambassador Hatem Ben Salem
Permanent Representative of Tunisia to
the United Nations Office at Geneva

Ms. Charlotte McClain
South African Human Rights Commission
Johannesburg, South Africa

Mr. A. Byaruhanga Rukooko
Lecturer, Makerere University
Kampala, Uganda

Mr. Ousmane Oumarou Sidibe
President, ERES
Bamako, Mali

Mr. Sushil Pyakurel
National Human Rights Commission
Kathmandu, Nepal

Mr. Horacio Morales
Chairperson, "La Liga"
Citizens Movement for Reform and Renewal
Manila, Philippines

Ms. María Silvia Guillén
Executive Director,
Fundación de Estudios para la Aplicación del Derecho (FESPAD)
San Salvador, El Salvador

Mr. Juan Antonio Fernández Palacios
Director General for Multilateral Affairs
Ministry of Foreign Affairs
Havana, Cuba

Mr. Luciano Mariz Maia
Regional Attorney of the Republic
Brasília DF, Brazil

Mr. Eduardo Cifuentes Muñoz
Ombudsman
Santafé de Bogotá, Colombia

Ms. Alicia Elena Pérez Duarte
Counsellor
Permanent Mission of Mexico to
the United Nations Office at Geneva

Mr. Arne Oshaug
Former Deputy Director-General, Ministry of Agriculture
Professor, Akershus University College
Bekkestua, Norway

II. RESOURCE PERSONS

Mr. Dumitru Ceausu
Member, Committee on Economic, Social and Cultural Rights
Bucharest, Romania

Mr. Philippe Texier
Member, Committee on Economic, Social and Cultural Rights
Conseiller à la Cour de cassation
Paris, France

Mr. Eibe Riedel
Member, Committee on Economic, Social and Cultural Rights
Chair of German and Comparative Public Law,
International Law and European Law, University of Mannheim
Mannheim, Germany

Mr. Jean Ziegler
Special Rapporteur on the right to food
Professor of Sociology, University of Geneva
Geneva, Switzerland

Mr. Asbjorn Eide
Former Director, Norwegian Institute of Human Rights
Project Leader, International Project on the Right to Food in Development (IPRFD)
Oslo, Norway

Mr. Uwe Kracht*
International consultant on food, nutrition and development
International Project on the Right to Food in Development (IPRFD)
Rome, Italy

---

* As a consultant, Mr. Kracht was actively involved in the organization of the consultation. However, an unfortunate accident prevented him from participating in the meeting.

III. HOST GOVERNMENT

Ms. Uschi Eid
Parliamentary Secretary of State
Federal Ministry for Economic Cooperation and Development, BMZ
Bonn, Germany

Mr. Gerd Poppe
Commissioner for Human Rights Policy and Humanitarian Aid
Federal Ministry for Foreign Affairs
Berlin, Germany

Mr. Jochen de Haas
Head of Division 416
Federal Ministry for Economic Cooperation and Development, BMZ
Bonn, Germany

Ms. Elke Deffner
Federal Ministry for Economic Cooperation and Development, BMZ
Bonn, Germany

Ms. Birgit Zeitz
Federal Ministry for Labour and Social Affairs
Bonn, Germany

Mr. Helmut Kulitz
Human Rights Task Force
Federal Ministry for Foreign Affairs
Berlin, Germany

Mr. Ludwig Nellinger
Federal Ministry for Consumer Protection, Food and Agriculture, BML
Bonn, Germany

IV. UNITED NATIONS BODIES AND SPECIALIZED AGENCIES

Food and Agriculture Organization

Mr. Kostas G. Stamoulis
Senior Economist
Officer-in-Charge ESAE
Rome, Italy

World Health Organization

Mr. James Akré
Technical Officer
Department of Nutrition for Health and Development
Geneva, Switzerland

United Nations Children's Fund

Mr. David Clark
Legal Officer
Nutrition Section
New York, United States of America

Mr. Fabio Sabatini
Programme Officer
UNICEF Zimbabwe
Harare, Zimbabwe

World Food Programme

Ms. Deborah Hines
Senior Adviser
Strategy and Policy Division
Rome, Italy

Ms. Marloes van der Sande
Policy Officer
Stategy and Policy Division
Rome, Italy

Administrative Committee on Coordination/Subcommittee on Nutrition, Working Group on Nutrition, Ethics and Human Rights

Ms. Wenche Barth Eide
Institute for Nutrition Research/School of Nutrition
University of Oslo
Oslo, Norway

Office of the United Nations High Commissioner for Human Rights

Mr. Bertrand Ramcharan
Deputy High Commissioner for Human Rights
Geneva, Switzerland

Ms. Stefanie Grant
Chief, Research and Right to Development Branch
Geneva, Switzerland

Mr. Carlos Villán Durán
Human Rights Research Project Leader
Geneva, Switzerland

V. NON-GOVERNMENTAL ORGANIZATIONS

Oxfam

Ms. Sally-Anne Way
University of Geneva
Geneva, Switzerland

CARE-East Africa

Mr. Daniel Maxwell
Regional Food and Livelihood Security Adviser
Nairobi, Kenya

FIAN-Foodfirst Information and Action Network

Mr. Michael Windfuhr
Executive Director
Heidelberg, Germany

Mr. Martin Wolpold-Bosien
Coordinator for Central America and Mexico
Heidelberg, Germany

International Jacques Maritain Institute

Mr. Héctor Faúndez Ledesma
Researcher
Rome, Italy

Humboldt University

Mr. Bernd Schubert
Director, Centre for Advanced Training in Agricultural Development
Berlin, Germany

VI. OBSERVERS

Ms. Marianne Smith
Senior Executive Officer
Ministry of Agriculture
Oslo, Norway

Ms. Sage Russell
Senior Program Associate, Science and Human Rights Program
American Association for the Advancement of Science
Washington, D.C., United States of America

Mr. Albert Engel
German Agency for Technical Cooperation and Development, GTZ
Eschborn, Germany

Mr. Hans Schoeneberger
German Agency for Technical Cooperation and Development, GTZ
Eschborn, Germany

Ms. Liselotte Marohn
German Agency for Technical Cooperation and Development, GTZ
Eschborn, Germany

Mr. Klaus Klennert
German Foundation for International Development Food and Agriculture Development
Feldafing, Germany

VII. SECRETARIAT

Ms. Petra Kade
German Foundation for Development, DSE
Feldafing, Germany

Ms. Henrike Stöcker
Federal Ministry for Economic Cooperation and Development
Bonn, Germany

Ms. Christiane Stroh
German Foundation for Development, DSE
Tübingen, Germany

Ms. Ingrid Wolf
German Agency for Technical Cooperation and Development, GTZ
Eschborn, Germany